

# TASMANIA

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## **PUBLIC HEALTH AMENDMENT (VAPING) BILL 2024**

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# **PUBLIC HEALTH AMENDMENT (VAPING) BILL 2024**

*(Brought in by the Minister for Health, Mental Health and  
Wellbeing, the Honourable Guy Barnett)*

## **A BILL FOR**

### **An Act to amend the *Public Health Act 1997***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

#### **1. Short title**

This Act may be cited as the *Public Health Amendment (Vaping) Act 2024*.

#### **2. Commencement**

This Act commences on 1 October 2024 or on the day on which it receives the Royal Assent, whichever is later.

#### **3. Principal Act**

In this Act, the *Public Health Act 1997*\* is referred to as the Principal Act.

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\*No. 86 of 1997

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**4. Section 3 amended (Interpretation)**

Paragraph (c) of the definition of *exempt device* in section 3 of the Principal Act is amended as follows:

- (a) by omitting “goods, or devices,” and substituting “goods or devices, other than vaping goods within the meaning of the *Therapeutic Goods Act 1989* of the Commonwealth,”;
- (b) by omitting “the *Therapeutic Goods Act 1989* of the Commonwealth” and substituting “that Act”.

**5. Section 69A amended (Information relating to tobacco products)**

Section 69A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “smoking” and substituting “tobacco”;
- (b) by omitting from subsection (2) “smoking” and substituting “tobacco”.

**6. Section 74A amended (Licence to sell smoking products)**

Section 74A of the Principal Act is amended as follows:

- (a) by renumbering the text of the section as subsection (1);

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(b) by inserting the following subsection after subsection (1):

(2) Subsection (1) does not apply to a person selling a personal vaporiser product if the person –

(a) holds a licence under section 16(1)(b) of the *Poisons Act 1971*; and

(b) sells the personal vaporiser product to another person who holds a smoking product licence that authorises the other person to sell personal vaporiser products.

**7. Section 74B substituted**

Section 74B of the Principal Act is repealed and the following section is substituted:

**74B. Application for smoking product licence**

(1) A person who is 18 or more years of age may apply to the Director for a licence to sell a tobacco product.

(2) An owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*, may apply to the Director for a licence to sell a personal vaporiser product at the relevant pharmacy

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business premises, within the meaning of that Act, for the pharmacy business.

- (3) An application under this section –
- (a) is to be in an approved form; and
  - (b) is to specify whether the application is made under subsection (1) or (2); and
  - (c) is to be accompanied by the prescribed fee.

**8. Section 74C amended (Grant or refusal of licence)**

Section 74C of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (2):
  - (ab) if the application relates to personal vaporiser products, must be satisfied that –
    - (i) the applicant is the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*; and
    - (ii) the applicant intends to sell the personal vaporiser products from the pharmacy business

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premises relating to that  
pharmacy business; and

(iii) that pharmacy business  
premises is registered  
under that Act; and

(b) by omitting subsection (2AB) and  
substituting the following subsection:

(2AB) The Director must not grant an  
application for a smoking product  
licence if –

(a) the applicant already  
holds a smoking product  
licence in respect of a  
different smoking  
product; or

(b) the application relates to  
tobacco products and the  
Director is satisfied that  
the applicant intends to  
sell those products from a  
premises that forms part  
of a pharmacy business  
premises that is registered  
under the *Pharmacy  
Control Act 2001*.

(c) by inserting the following subsection  
after subsection (4):

(4A) In addition to any conditions  
imposed on a smoking product  
licence under subsection (1) or

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(4), the regulations may prescribe conditions that apply to all smoking product licences or a specified class of smoking product licences.

(d) by inserting the following subsection after subsection (5):

(5A) In addition to subsection (5), the Director may make any enquiries that the Director thinks fit from one or more of the following bodies, if the Director is making a determination under subsection (2)(ab):

- (a) the Tasmanian Pharmacy Authority established by section 6 of the *Pharmacy Control Act 2001*;
- (b) any relevant registration board within the meaning of the *Pharmacy Control Act 2001*;
- (c) the Australian Health Practitioner Regulation Agency, established by section 23 of the Health Practitioner Regulation National Law (Tasmania);
- (d) any other prescribed body or entity.



**9. Section 74D amended (Issue of licence)**

Section 74D of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) specify, on the licence, any conditions prescribed under this Division that apply in respect of the licence; and

**10. Section 74F amended (Renewal of smoking product licence)**

Section 74F of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (3):

- (3A) The Director must not grant an application for the renewal of a smoking product licence if the Director is satisfied that –

- (a) the smoking product licence relates to personal vaporiser products and –

- (i) the applicant is no longer the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*; or

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(ii) the pharmacy business premises relating to that pharmacy business is no longer registered under that Act; or

(b) the smoking product licence relates to tobacco products and the applicant intends to sell those products from a premises that forms part of a pharmacy business premises that is registered under the *Pharmacy Control Act 2001*.

(b) by inserting the following subsection after subsection (8):

(8A) In addition to any conditions under subsection (8), a licence renewed under this section is also subject to any conditions prescribed under section 74C(4A) that apply in respect of the previous licence.

**11. Section 74G amended (Variation of smoking product licence)**

Section 74G of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Subsection (1) does not apply in respect of a condition prescribed under section 74C(4A).

**12. Section 74HA inserted**

After section 74H of the Principal Act, the following section is inserted in Division 3:

**74HA. Smoking product licence void in certain circumstances**

- (1) A smoking product licence relating to personal vaporiser products is void if –
- (a) the holder of the licence ceases to be the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*; or
  - (b) the pharmacy business premises relating to that pharmacy business is no longer registered under that Act.
- (2) A licence that is void under this section –
- (a) ceases to have effect on becoming void; and
  - (b) has no value.
- (3) The voiding of a licence under this section is not subject to review under section 160A.

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**13. Section 74J amended (Register of smoking product licences)**

Section 74J(2) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) the smoking product to which each licence relates;

**14. Section 74LA inserted**

After section 74L of the Principal Act, the following section is inserted in Division 3:

**74LA. Effect of *Public Health Amendment (Vaping) Act 2024***

- (1) On the day on which the *Public Health Amendment (Vaping) Act 2024* commences, a smoking product licence that was issued, in respect of more than one smoking product, before the commencement of that Act –
  - (a) is taken to be issued in respect of a tobacco product, if the licence is issued to a person who is not the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*; and
  - (b) is taken to be issued in respect of a personal vaporiser product, if the licence is issued to the owner

of a pharmacy business, within the meaning of that Act.

- (2) On the day on which the *Public Health Amendment (Vaping) Act 2024* commences, a smoking product licence issued in respect of a personal vaporiser product is void if the holder of the licence is not the owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*.
- (3) Except as specified under subsections (1) and (2), a smoking product licence that was in force immediately before the commencement of the *Public Health Amendment (Vaping) Act 2024* continues in force after that commencement day on the same terms and conditions.

## **15. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.